

**Congress of the United States**  
**Washington, DC 20510**

March 2, 2010

The Honorable Peter Orzsag  
Director, Office of Management and Budget  
Executive Office of the President  
Eisenhower Executive Office Building  
1650 Pennsylvania Avenue, NW  
Washington, DC 20503

Dear Director Orzsag:

Two weeks ago, without disclosing the reason or the duration for the delay, the OMB extended review of a proposed re-definition of "catfish" under the Food Safety and Inspection Service's (FSIS) rulemaking authority provided for in Section 11016 of the Food, Conservation, and Energy Act (Farm Bill) of 2009. It is our understanding that when OMB asks for an extension of a review of a pending regulation, there is a time limit on that extension, but there is none when it is the agency asking for the review. For reasons of both process and policy as well as for the economic welfare of our state, we strongly recommend that you explain the reason for the delay and give those companies waiting for a conclusion some certainty on when the review will end.

In contrast to the quiet delay of a major rule review, you announced in a press release the debut of OIRA's Dashboard, "an easy-to-use website that will allow people to track the progress of federal rules and regulations that have been submitted for interagency review". We applaud the effort at greater transparency but the Dashboard leaves many questions unanswered. It graphically illustrates that the pending review just delayed is a statistical anomaly as a function of duration and makes clear that it is economically significant, but it gives people no sense of the progress made on the rule or when the review will conclude. Nor does it in any clear way indicate that the review was extended at the request of the Department of Agriculture or the Department's rationale for the request.

We have made the case repeatedly that it was neither our intent nor expectation when the Farm Bill was enacted that the definition of catfish would be expanded beyond the family Ictaluridae as defined in Section 10806 of the Farm Bill of 2002. To justify an expansive definition beyond the family of Ictaluridae, the Administration would have to point to the legislative record to indicate that the Congress called for an expansive definition, that the USDA system for inspection is superior to the FDA system, and that the shift in regulation would result in improved food safety. We do not believe that the USDA has been able to make the case on these grounds to the OMB or its sister agencies and we presume that is the reason for the delay.

As you know, there are U.S. companies in New Bedford (and Gloucester), Massachusetts (and New Hampshire, Virginia, Georgia, Florida, California, and Washington) waiting for this rule to be finalized before deciding to create jobs on pangasius processing lines. Delays further cause them uncertainty about those expansion plans. Delays also may cause them to abandon plans.

The Honorable Peter Orzsag  
March 2, 2010  
Page 2

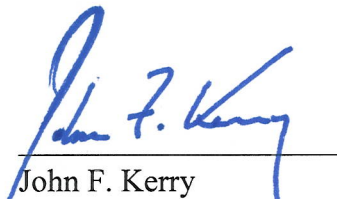
Were further delay necessary, we would not object. But neither the OMB nor the USDA has made the case. If the USDA does not have the food safety statistics to back up its claims that it can improve American public health through a regulatory shift of authority, a further delay is not going to produce that data. The USDA has had since June 2008 to develop these rules. And the rule has been pending at the OMB since November. There is nothing new to introduce into your deliberations to our knowledge.

There are important reasons to keep the definition of catfish covered by this program narrow. First, Congress established a definition for catfish in the Farm Bill of 2002, which is further referenced by the crop insurance provisions of the 2008 Farm Bill in section 12023. Second, a broader definition would likely conflict with the duties of the Food and Drug Administration (FDA), which has primary responsibility for seafood safety and which has developed the expertise in seafood safety necessary to detect the unique risks from food-borne illnesses associated with fish. This includes its seafood Hazard Analysis and Critical Control Points program, as well as FDA's extensive work to improve compliance with U.S. standards set by the seafood industry. Third, the USDA's resources are not infinite and the added responsibility could draw resources away from the agency's critical work in meat and poultry inspections.

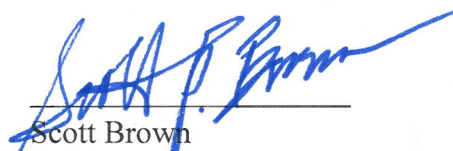
We are also concerned that a broad definition of catfish could have serious trade implications and adversely affect American businesses and workers. A decision to apply new inspection procedures beyond existing definition would create a de facto ban on exports from key trading partners while the FSIS established its inspection program and our trading partners made the necessary changes to their seafood production and processing facilities to comply with a new system. This process could take years – years in which businesses would otherwise be importing product, selling it, and employing American workers.

We urge you again to take our views into consideration as you conclude your review of the proposed definition of "catfish", bring that review to a conclusion, and ensure full consideration of all the views of the experts at all the relevant departments and agencies about the impact of the proposed definition on all American businesses.

Sincerely,



John F. Kerry  
US Senator



Scott Brown  
US Senator



Barney Frank  
US Representative